

# HOUSE BILL 1038

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11r1567

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By: **Delegates Olszewski and Kach**

Introduced and read first time: February 11, 2011

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Commercial Law – Residential Mortgage Loans – Escrow Amounts**

3 FOR the purpose of prohibiting certain lenders and lending institutions from  
4 including, for a certain period of time, certain increases in the amount of certain  
5 escrow payments in calculating the amount of interest or any fee due under  
6 certain residential mortgage loans under certain circumstances; providing for  
7 the construction of certain provisions of this Act; and generally relating to  
8 residential mortgage loans and escrow amounts.

9 BY repealing and reenacting, without amendments,  
10 Article – Commercial Law  
11 Section 12–109 and 12–109.2(c)  
12 Annotated Code of Maryland  
13 (2005 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Commercial Law  
16 Section 12–109.1 and 12–1026  
17 Annotated Code of Maryland  
18 (2005 Replacement Volume and 2010 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Commercial Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 12-109.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Lending institution" means a bank, savings bank, or savings and  
4 loan association doing business in Maryland.

5 (3) "Escrow account" means an expense or escrow account which tends  
6 to protect the security of a loan by the accumulation of funds for the payment of taxes,  
7 insurance premiums, or other expenses.

8 (b) (1) After May 31, 1974, a lending institution which lends money  
9 secured by a first mortgage or first deed of trust on any interest in residential real  
10 property and creates or is the assignee of an escrow account in connection with that  
11 loan shall pay interest to the borrower on the funds in the escrow account at the  
12 greater of:

13 (i) A rate of 3 percent per annum simple interest; or

14 (ii) The rate of interest regularly paid by the lending institution  
15 on regular passbook savings accounts.

16 (2) Interest on these funds shall be:

17 (i) Computed on the average monthly balance in the escrow  
18 account; and

19 (ii) Paid annually to the borrower by crediting the escrow  
20 account with the amount of interest due.

21 (3) The lending institution shall annually provide the borrower with a  
22 statement of the escrow balance.

23 (c) The provisions of this section do not apply to a lending institution which  
24 provides for the payment of taxes, insurance, or other expenses under the direct  
25 reduction method by which these expenses, when paid by the lender, are added to the  
26 outstanding principal balance of the loan.

27 (d) This section does not apply if the loan is purchased by an out-of-state  
28 lender through the Federal National Mortgage Association, the Government National  
29 Mortgage Association, or the Federal Home Loan Mortgage Corporation and the  
30 out-of-state lender as a condition of purchase elects to service the loan. However, this  
31 section shall apply if the out-of-state lender sells the loan to a Maryland lender or  
32 places the loan with a Maryland lender for servicing.

33 12-109.1.

1 (a) The provisions of this section do not apply to escrow accounts maintained  
2 in connection with loans described in § 12-103(e)(1) of this subtitle.

3 (b) Except in a foreclosure, release, or as provided in subsection (c) of this  
4 section, funds in any escrow account for use in paying taxes, insurance premiums and  
5 ground rents may not be used to:

6 (1) Reduce the principal; or

7 (2) Pay interest or other loan charges.

8 (c) If there is periodically a balance in the escrow account that exceeds the  
9 amount provided for in the note, loan agreement, or security instrument, the borrower  
10 shall be given at least annually the option of:

11 (1) Receiving a refund of the excess amount;

12 (2) Applying the excess amount to the payment of principal and  
13 interest; or

14 (3) Leaving the excess amount in the escrow account.

15 (d) A refund of any excess amount shall be made:

16 (1) Within 60 days after the receipt by the lender of the borrower's  
17 request for a refund; or

18 (2) If the borrower has not notified the lender of the option chosen by  
19 the borrower under subsection (c) of this section, within 60 days after the date the  
20 lender mailed notice of the excess amount to the borrower.

21 **(E) (1) IF, AFTER RECALCULATING THE AMOUNT THAT IS REQUIRED**  
22 **TO BE MAINTAINED IN ESCROW UNDER A FIRST MORTGAGE OR FIRST DEED OF**  
23 **TRUST ON RESIDENTIAL REAL PROPERTY, A LENDER DETERMINES THAT THE**  
24 **AMOUNT THAT A BORROWER IS REQUIRED TO PAY MUST INCREASE, THE**  
25 **LENDER MAY NOT INCLUDE, FOR A 1-YEAR PERIOD AFTER THE DETERMINATION**  
26 **IS MADE, THE AMOUNT OF THE INCREASE IN ESCROW PAYMENTS IN ANY**  
27 **CALCULATION OF THE AMOUNT OF INTEREST OR ANY FEE DUE UNDER THE**  
28 **LOAN.**

29 **(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO LIMIT THE**  
30 **ABILITY OF A LENDER TO IMPOSE A LATE FEE FOR ANY ESCROW PAYMENT THAT**  
31 **IS DUE AND NOT TIMELY PAID.**

32 12-109.2.

1 (c) A lender may not impose a collection fee or service charge on the  
2 maintenance of an escrow account on a first mortgage.

3 12-1026.

4 (a) (1) In this section the following words have the meanings indicated.

5 (2) "Lending institution" means a bank, savings bank, or savings and  
6 loan association doing business in Maryland.

7 (3) "Escrow account" means an expense or escrow account which tends  
8 to protect the security of a loan by the accumulation of funds for the payment of taxes,  
9 insurance premiums, or other expenses.

10 (b) (1) A lending institution that makes a loan to a consumer borrower  
11 secured by a first mortgage or first deed of trust on residential real property and  
12 creates or is the assignee of an escrow account in connection with that loan shall pay  
13 interest to the consumer borrower on the funds in the escrow account at the greater of:

14 (i) A rate of 3 percent per annum simple interest; or

15 (ii) The rate of interest regularly paid by the lending institution  
16 on regular passbook savings accounts.

17 (2) Interest on these funds shall be:

18 (i) Computed on the average monthly balance in the escrow  
19 account; and

20 (ii) Paid annually to the borrower by crediting the escrow  
21 account with the amount of interest due.

22 (3) The lending institution shall annually provide the consumer  
23 borrower with a statement of the escrow balance.

24 (4) The provisions of this subsection do not apply to a lending  
25 institution that provides for the payment of taxes, insurance, or other expenses under  
26 the direct reduction method by which these expenses, when paid by the lending  
27 institution, are added to the outstanding principal balance of the loan.

28 (5) (i) This subsection does not apply if the loan:

29 1. Is purchased by an out-of-state lender through the  
30 Federal National Mortgage Association, the Government National Mortgage  
31 Association, or the Federal Home Loan Mortgage Corporation; and



1 INCREASE IN ESCROW PAYMENTS IN ANY CALCULATION OF THE AMOUNT OF  
2 INTEREST OR ANY FEE DUE UNDER THE LOAN.

3 (II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT  
4 THE ABILITY OF A LENDING INSTITUTION TO IMPOSE A LATE FEE FOR ANY  
5 ESCROW PAYMENT THAT IS DUE AND NOT TIMELY PAID.

6 (d) (1) Funds in any escrow account shall be kept separate from and may  
7 not be commingled with the funds of the credit grantor.

8 (2) A credit grantor may place escrow funds received in connection  
9 with more than one loan into a single escrow account.

10 (3) In the event of the bankruptcy of the credit grantor, any escrow  
11 funds placed in any escrow account may not be considered to be part of the bankrupt  
12 estate of the credit grantor.

13 (e) A credit grantor may not impose a collection fee or service charge on the  
14 maintenance of an escrow account on a first mortgage or first deed of trust.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2011.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.